

## Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05(g).

2. Section 117.838 is revised to read as follows:

#### § 117.838 Roanoke Sound.

(a) The draw of the U.S. 64/264 bridge, mile 2.8, at Manteo, NC, shall open on signal, except that between May 1 through October 31, from 7:00 a.m. to 7:00 p.m., the draw must open only on the hour for the passage of vessels.

(b) To accommodate approaching vessels, the hourly opening may be delayed up to 10 minutes past the hour.

(c) Public vessels of the United States and any vessel in an emergency involving danger to life or property shall be passed at any time.

Dated: January 12, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-2084 Filed 1-27-89; 8:45 am]

BILLING CODE 4910-14-M

## VETERANS ADMINISTRATION

### 38 CFR Part 4

#### Systemic Diseases, Temporary Total Evaluations Based on Periods of Hospitalization or Surgery, Regular Scheduler Assignment of a Total Evaluation Based on Total Industrial Impairment

**AGENCY:** Veterans Administration.

**ACTION:** Final rule.

**SUMMARY:** The Veterans Administration (VA) has amended the Schedule for Rating Disabilities by adding Melioidosis, acquired immunodeficiency syndrome (AIDS), AIDS Related Complex (ARC), and human immunodeficiency virus (HIV) Antibody Positive; by amending the rating criteria for evaluation of other systemic diseases; by broadening the definition of surgery for assignment of a temporary total evaluation under § 4.30; by clarifying what constitutes 21 days of hospitalization under § 4.29; by providing that when the main criterion for assignment of a total evaluation is total industrial impairment (in mental disorders), such total evaluation will be

assigned without resort to the individual unemployability provisions of § 4.16; and by inserting revised psychiatric nomenclature in § 4.124a to conform with a recent revision to § 4.132. These changes are necessary to clarify certain eligibility criteria and are intended as a periodic update of the schedule for rating disabilities required by law.

**EFFECTIVE DATE:** These regulations are effective March 1, 1989.

#### FOR FURTHER INFORMATION CONTACT:

Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC, 20420 (202) 233-3005.

**SUPPLEMENTARY INFORMATION:** On pages 18099-18101 of the Federal Register of May 20, 1988, the VA published proposed rules to amend the Schedule for Rating Disabilities. A correction was published on page 19856 of the Federal Register of May 31, 1988. Interested persons were invited to submit comments, suggestions, or objections regarding the proposed rules by June 20, 1988. Two service organizations and one individual submitted comments.

One commenter expressed concern with proposed Diagnostic Code 6353, HIV Antibody Positive (no underlying disease). It was suggested that it be amended to read, "HIV Antibody Positive or other clinical evidence of its presence," as several reports suggest "Antibody Positive" may not always be detectable by current clinical procedures, but is present nevertheless. We do not concur. The proposed rule reflects both the currently available technology and the current understanding of the disease process. While it is true that there are individuals with false negative tests, there are no clinical findings which would differentiate such an individual from one with a true negative test.

That commenter also objected to the proposed change to DC 6305, Filariasis, providing for a 10% evaluation as the requirements conflict with those currently in effect for a 30% evaluation. We concur. The requirements for a 10% evaluation have been deleted from the final rule; however, we reserve the right to propose this matter again at a future date. The proposed changes in terminology are retained.

The same commenter also had no objection to the authorized absence periods cited in § 4.29, but felt they conflicted with the sentence in the preamble which stated that a temporary release approved by an attending physician as part of the treatment plan

will not be considered an absence. It was requested that we insert that sentence in the rule. While we concur with the request to insert the sentence in the rule, we do not concur that there is a conflict between the authorized absence periods and the sentence as not all temporary releases are approved as part of a veteran's treatment. Those that are so approved must be certified to that effect. We are amending § 4.29(a) to include the sentence from the preamble of the proposal.

Another commenter felt the premise set forth for the change to § 4.29 was excellent, but that the proposed changes were deficient in that they did not encompass authorized absences of less than 4 days or more than 14 days. We concur and are amending § 4.29(a) (1) and (2) accordingly.

We are restoring the words "Veterans Administration" before the word "expense" in the introductory paragraph of § 4.29 as they were inadvertently dropped in the proposed rule.

A third commenter objected to the proposed change to § 4.30 requiring one month of convalescence for a temporary total evaluation suggesting it is in conflict with 38 U.S.C. 3011(c)(2). We do not concur as the cited law refers to the commencement of payment pursuant to § 4.29 when hospitalization begins and ends within the same calendar month.

That commenter also suggested that a note be inserted following the rating criteria for brucellosis to provide that residuals involving the joints, heart and other body organs and systems be rated separately or in accordance with the current 50 percent and lesser evaluations, whichever would provide the greater evaluation. We do not concur as the current rule provides that complications such as arthritis, endocarditis, uveitis, etc., may be rated separately from and in addition to the evaluations for the residuals of the disease itself.

The same commenter suggested that consideration be given to placing histoplasmosis in the rating schedule. As our proposed rules did not involve histoplasmosis, consideration is not in order at this time; however, we will consider the matter in the future.

It was additionally pointed out that the proposed rules did not include amendments to Appendices A, B, and C of 38 CFR Part 4. Because the appendices were not amended to conform with some previous rule changes, we are planning to do a separate, complete updating of the appendices in the near future.

We appreciate the comments and suggestions of those who responded to



publication of the proposed rules. The proposed rules are adopted with the amendments noted above. The final rules are set forth below.

The Administrator hereby certifies that these final regulations will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that these regulations would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these final regulations are non-major for the following reasons:

(1) They will not have an annual effect on the economy of \$100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program numbers are 64.104 and 64.109.

#### List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: December 21, 1988.

Thomas K. Turnage,  
Administrator.

38 CFR Part 4, Schedule for Rating Disabilities, is amended as follows:

#### PART 4—[AMENDED]

1. The authority citation for Part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 355.

2. In § 4.16, paragraph (c) is added to read as follows:

#### § 4.16 Total disability ratings for compensation based on unemployability of the individual.

(c) The provisions of paragraph (a) of this section are not for application in cases in which the only compensable service-connected disability is a mental disorder assigned a 70 percent evaluation, and such mental disorder precludes a veteran from securing or following a substantially gainful occupation. In such cases, the mental disorder shall be assigned a 100 percent

schedular evaluation under the appropriate diagnostic code.

#### § 4.29 [Amended]

3. In § 4.29(g), remove the words "§ 3.321(b)" where they appear and add, in their place, the words "§ 3.321(b)(1)".

4. In § 4.29, the introductory text, paragraph (a) and the first sentence of paragraph (c) are revised to read as follows:

#### § 4.29 Ratings for service-connected disabilities requiring hospital treatment or observation.

A total disability rating (100 percent) will be assigned without regard to other provisions of the rating schedule when it is established that a service-connected disability has required hospital treatment in a Veterans Administration or an approved hospital for a period in excess of 21 days or *hospital observation at Veterans Administration expense* for a service-connected disability for a period in excess of 21 days.

(a) Subject to the provisions of paragraphs (d), (e), and (f) of this section this increased rating will be effective the first day of continuous hospitalization and will be terminated effective the last day of the month of hospital discharge (regular discharge or release to non-bed care) or effective the last day of the month of termination of treatment or observation for the service-connected disability. A temporary release which is approved by an attending Veterans Administration physician as part of the treatment plan will not be considered an absence.

(1) An authorized absence in excess of 4 days which begins during the first 21 days of hospitalization will be regarded as the equivalent of hospital discharge effective the first day of such authorized absence. An authorized absence of 4 days or less which results in a total of more than 8 days of authorized absence during the first 21 days of hospitalization will be regarded as the equivalent of hospital discharge effective the ninth day of authorized absence.

(2) Following a period of hospitalization in excess of 21 days, an authorized absence in excess of 14 days or a third consecutive authorized absence of 14 days will be regarded as the equivalent of hospital discharge and will interrupt hospitalization effective on the last day of the month in which either the authorized absence in excess of 14 days or the third 14 day period begins, except where there is a finding that convalescence is required as provided by paragraph (e) or (f) of this section. The termination of these total

ratings will not be subject to § 3.105(e) of this chapter.

(c) The assignment of a total disability rating on the basis of hospital treatment or observation will not preclude the assignment of a total disability rating otherwise in order under other provisions of the rating schedule, and consideration will be given to the propriety of such a rating in all instances and to the propriety of its continuance after discharge.

5. In § 4.30, introductory text is added and paragraphs (a), (a)(1), (a)(2) and (a)(3) are revised to read as follows:

#### § 4.30 Convalescent ratings.

A total disability rating (100 percent) will be assigned without regard to other provisions of the rating schedule when it is established by report at hospital discharge (regular discharge or release to non-bed care) or outpatient release that entitlement is warranted under paragraph (a) (1), (2) or (3) of this section effective the date of hospital admission or outpatient treatment and continuing for a period of 1, 2, or 3 months from the first day of the month following such hospital discharge or outpatient release. The termination of these total ratings will not be subject to § 3.105(e) of this chapter. Such total rating will be followed by appropriate schedular evaluations. When the evidence is inadequate to assign a schedular evaluation, a physical examination will be scheduled and considered prior to the termination of a total rating under this section.

(a) Total ratings will be assigned under this section if treatment of a service-connected disability resulted in:

(1) Surgery necessitating at least one month of convalescence (Effective as to outpatient surgery March 1, 1989.)

(2) Surgery with severe postoperative residuals such as incompletely healed surgical wounds, stumps of recent amputations, therapeutic immobilization of one major joint or more, application of a body cast, or the necessity for house confinement, or the necessity for continued use of a wheelchair or crutches (regular weight-bearing prohibited). (Effective as to outpatient surgery March 1, 1989.)

(3) Immobilization by cast, without surgery, of one major joint or more. (Effective as to outpatient treatment March 10, 1976.)

6. In § 4.88a, diagnostic codes 6305, 6309, 6314, 6316 are revised and diagnostic codes 6318, 6351, 6352, and



6353 are added so that the revised and added material reads as follows:

**§ 4.88a Schedule of ratings-systemic diseases.**

**6305 Filariasis:**

Initial infection with severe lymphangitis or lymphadenitis..... 100

Chronic, with repeated recurrences and tendency to severe multiple involvement of extremities and genitalia or severe lymphadenitis.. 100

Chronic, with repeated recurrences and beginning permanent deformity of one or more extremities or genitalia or moderate lymphadenitis..... 60

Chronic, following any recurrence, symptomatic..... 30

With subsidence of symptoms following only one attack..... 0

**Note.**—The following ratings of this code may be combined among themselves to cover multiple involvements but are not to be combined with the preceding ratings of this code.

Permanent deformity of an extremity or of the genitalia:

Severe..... 60

Moderate..... 30

Mild..... 10

**6309 Rheumatic fever:**

As established active generalized disease with constitutional symptoms..... 100

**Note.**—Rate residuals under the appropriate cardiac, musculoskeletal, neurological or other diagnostic code, e.g., 7000, 5002 or 8105.

**6314 Beriberi:**

Pronounced, with long history of limited nourishment, edema, weakness, cardiac enlargement or murmurs, peripheral neuropathy or other manifestations not responding to therapy..... 100

Severe form, with some of the above precluding more than strictly sedentary activity..... 60

Moderately severe form, with some of the above precluding more than ordinary activity..... 30

Moderate residuals..... 10

**6316 Brucellosis (Malta or undulant fever):**

As active incapacitating febrile disease (initial or recurrent episode) with arthritis, endocarditis, uveitis or other complications..... 100

Chronic forms:

Severe, with frequent febrile episodes..... 50

Moderately severe, with febrile episodes not more frequently than once in 3 months..... 30

Moderate, with infrequent febrile episodes, but with fatigability, moderate depression, etc..... 10

Rate complications, as arthritis, endocarditis, uveitis, etc., separately.

**6318 Melioidosis:**

Pronounced, with persistent cough, weakness, emaciation, central nervous system involvement or other residuals of military dissemination..... 100

For less severe residuals rate under appropriate system.

**6351 Acquired immunodeficiency syndrome (AIDS):**

**6352 AIDS Related Complex (ARC):**  
**Note.**—Rate underlying disease(s) analogous to an appropriate diagnostic code for the affected body system. Evaluations may be assigned from 0 to 100 percent using an evaluation for the analogous diagnostic code selected.

**6353 HIV Antibody Positive (no underlying disease)..... 0**

**§ 4.124a [Amended]**

7. In the first chart, "Organic Diseases of the Central Nervous System," in the second paragraph under diagnostic code 8045, remove the words "non-psychotic organic brain syndrome" where they appear and add, in their place, the words "dementia associated"; in the second paragraph under diagnostic code 8046, remove the words "non-psychotic organic brain syndrome" where they appear and add, in their place, the words "multi-infarct dementia".

8. In "The Epilepsies" under the paragraph titled, "Mental Disorders in Epilepsies," remove the words "non-psychotic organic brain syndrome" where they appear and add, in their place, the word "dementia".

[FR Doc. 89-2003 Filed 1-27-89; 8:45 am]

BILLING CODE 8320-01-M

**38 CFR Part 21**

**Use of Educational Assistance Benefits as a Part of a Vocational Rehabilitation Program**

**AGENCY:** Veterans Administration.

**ACTION:** Final regulatory amendments.

**SUMMARY:** The Department of Defense Authorization Act, 1985, established an educational assistance program under Chapter 30, Title 38, United States Code. One of the law's provisions allows an otherwise eligible veteran to elect

payment at the rates provided under this program for training which the veteran is pursuing as a part of a vocational rehabilitation program. These final regulatory amendments implement this provision of law.

**EFFECTIVE DATE:** These amendments are effective October 19, 1984, the date upon which the program authorized under Chapter 30, Title 38, United States Code became law.

**FOR FURTHER INFORMATION CONTACT:**

Morris Triestman, Rehabilitation Consultant, Policy and Program Development (226A), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2886.

**SUPPLEMENTARY INFORMATION:** At pages 30314 through 30317 of the *Federal Register* of August 11, 1988, the Veterans Administration [VA] published proposed regulatory amendments which implement statutory provisions allowing an otherwise eligible veteran to elect payment at the rates provided under Chapter 30 for training which the veteran is pursuing as a part of a vocational rehabilitation program. Interested persons were given 30 days in which to submit their comments, suggestions, or objections to the proposed regulatory amendments. No comments, suggestion, or objections were received. Since no comments, suggestions, or objections were received, these amendments are adopted as final.

These final amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. These amendments will not have a \$100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant effects on the economy.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented. Moreover, the VA finds that good cause exists for making these rules, like the sections of law which they implement, retroactive to the date the educational assistance program authorized under Pub. L. 98-525 becomes effective. A delayed effective date would be contrary to statutory design, would complicate implementation of these provisions of law, and might result in denial of a benefit to a veteran who is entitled by law to that benefit.



The Administrator certifies that these final amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these final amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604. The reasons for this certification are that the proposed regulations simply implement and interpret statutory provisions. These changes only concern the eligibility and participation of individual veterans under the vocational rehabilitation program.

(The Catalog of Federal Domestic Assistance Number is 64.116.)

#### List of subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 15, 1988.

Thomas K. Turnage,  
Administrator.

38 CFR Part 21 is amended as set forth below:

#### PART 21—[AMENDED]

1. Section 21.22 is amended by revising paragraph (a) introductory text and the authority citation following paragraph (a)(2), to read as follows:

##### § 21.22 Nonduplication—Federal programs.

(a) *Allowances.* A service-disabled veteran who is eligible for benefits under Chapter 31, may not receive a subsistence allowance or elect payment of an allowance at the educational assistance rate under Chapter 30 or Chapter 34 pursuant to § 21.264 if the veteran:

(Authority: 38 U.S.C. 1781; Pub. L. 98-525)

2. Section 21.78 is amended by revising paragraph (b)(3), (b)(4) introductory text, (b)(4)(iii) and the authority citation, to read as follows:

##### § 21.78 Approving more than 48 months of rehabilitation.

(b) \* \* \*

(3) The veteran previously used education benefit entitlement under other programs administered by the VA, and the additional period of assistance to be provided under Chapter 31 which the veteran needs to become

employable will result in more than 48 months being used under all VA education programs, under these conditions the number of months necessary to complete the program may be authorized under Chapter 31, provided that the length of the extension will not result in authorization of more than 48 months under Chapter 31 alone.

(Authority: 38 U.S.C. 1795)

(4) A veteran in an approved Chapter 31 program has elected payment of benefits at the Chapter 30 or Chapter 34 educational assistance rate. The 48 month limitation may be exceeded only:

(ii) If the veteran is in a course on a term, quarter, or semester basis which began before the 36 month limitation on Chapter 30 entitlement or 45 month limitation on Chapter 34 entitlement was reached, and completion of the course will be possible by permitting the veteran to complete the training under Chapter 31.

(Authority: 38 U.S.C. 1413, 1795; Pub. L. 98-525)

3. Section 21.148 is amended by revising paragraph (d) to read as follows:

##### § 21.148 Tutorial assistance.

(d) *Payment at the Chapter 30 or Chapter 34 rate.* If a veteran has elected payment at the educational assistance rate payable under Chapter 30 or Chapter 34, he or she may not be provided individualized tutorial assistance under provision of Chapter 31. (See § 21.334.)

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

4. Section 21.254 is amended by revising paragraph (b)(1) and the authority citation following paragraph (b)(4), to read as follows:

##### § 21.254 Supportive services.

(b) \* \* \*

(1) Subsistence allowance, or payment of an allowance at the educational assistance rate paid under Chapter 30 or Chapter 34 for similar training;

(Authority: 38 U.S.C. 1504(a), 1508(f); Pub. L. 98-525)

5. Section 21.256 is amended by revising paragraph (e)(2) and adding an authority citation, to read as follows:

##### § 21.256 Incentives for employers.

(e) \* \* \*

(2) Notwithstanding any other provisions of these regulations, if the

program in which the veteran is participating meets the criteria for approval of on-job training under Chapter 30 or Chapter 34, the veteran may be paid educational assistance under Chapter 30 or Chapter 34 to the extent that he or she has remaining eligibility and entitlement under Chapter 30 or Chapter 34. (See § 21.264)

(Authority: 38 U.S.C. 1508(f), 1516(b); Pub. L. 98-525)

6. Section 21.260 is amended by revising paragraph (a) and the authority citation, to read as follows:

##### § 21.260 Subsistence allowance.

(a) *General.* A veteran in a rehabilitation program under Chapter 31 will receive a monthly subsistence allowance at the rates specified in paragraph (b) of this section, unless he or she has elected to receive payment at the rate of the monthly educational assistance allowance payable under Chapter 30 or Chapter 34 for similar training. See § 21.164 of this part for election of payment at the Chapter 30 or Chapter 34 rate, § 21.4136 of this part for payment at Chapter 34 rates, and §§ 21.7136, 21.7137, and 21.7138 of this part for payment at Chapter 30 rates.

(Authority: 38 U.S.C. 1508(a), 1508(f); Pub. L. 98-525)

7. Section 21.264 is amended by revising the section heading, paragraph (a) introductory text, (a)(1), (a)(2), the authority citation following paragraph (a)(3), (b)(1) and the authority citation following paragraph (b)(3), (c) introductory text and the authority citation following paragraph (c)(3) (iii), (d) and the authority citation, to read as follows:

##### § 21.264 Election of payment at the Chapter 30 or Chapter 34 educational assistance rate.

(a) *Eligibility.* A veteran who applies for, and is found entitled to training or education under Chapter 31, may elect to receive payment at the educational allowance rate and other assistance furnished under Chapter 30 or Chapter 34, for similar training in lieu of a subsistence allowance, provided the following criteria are met:

(1) The veteran has remaining eligibility for, and entitlement to educational assistance under Chapter 30 or Chapter 34;

(2) The veteran enrolls in a program of education or training approved for benefits under Chapter 30 or Chapter 34;

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)



(b) \* \* \*

(1) Chapter 30 or Chapter 34 eligibility or entitlement ends earlier;

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

(c) *Services precluded.* A veteran entitled to vocational rehabilitation training or education who elects payment at the educational assistance rate payable under Chapter 30 and Chapter 34 shall be provided the same training and rehabilitation services as other veterans under Chapter 31, but may not be provided:

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

(d) *Chapter 30 or Chapter 34 provisions applicable.* A veteran who has elected payment at the Chapter 30 or Chapter 34 educational assistance rate must meet the same terms and conditions as other veterans pursuing similar training under these programs.

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

8. Section 21.268 is amended by revising paragraph (b), to read as follows:

**§ 21.268 Employment adjustment allowance.**

(b) *Reelection of subsistence allowance.* A veteran who has elected payment at the Chapter 30 or Chapter 34 educational assistance allowance rate may be paid an employment adjustment allowance only if he or she reelections subsistence allowance to become effective no later than the day following completion of the period of rehabilitation to the point of employability.

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

9. Section 21.272 is amended by revising paragraph (b)(1) and adding an authority citation following paragraph (b)(3), to read as follows:

**§ 21.272 Veteran-student services.**

(b) \* \* \*

(1) Need of the veteran to augment the subsistence allowance or payment made by the Chapter 30 or Chapter 34 rate;

(Authority: 38 U.S.C. 1504(a)(4), 1508(f), 1685; Pub. L. 98-525)

10. Section 21.276 is amended by revising paragraphs (d), (e), and (g), to read as follows:

**§ 21.276 Incarcerated veterans.**

(d) *Halfway house.* A subsistence allowance may be paid to a veteran

pursuing a rehabilitation program while residing in a halfway house as a result of a felony conviction even though all of the veteran's living expenses are paid by a non-VA Federal, State, or local government program.

(Authority: 38 U.S.C. 1508(a))

(e) *Work-release program.* A subsistence allowance may be paid to a veteran in a work-release program as a result of a felony conviction.

(g) *Payment of allowance at the rates paid under Chapter 30 or Chapter 34.* A veteran incarcerated for a felony conviction or a veteran in a halfway house or work-release program who elects payment at the educational assistance rate paid under Chapter 30 or Chapter 34 shall be paid in accordance with the provisions of law applicable to other incarcerated veterans training under Chapter 30 or Chapter 34.

(Authority: 38 U.S.C. 1508(f), 1780(a); Pub. L. 98-525)

11. Section 21.320 is amended by revising paragraph (b)(3) and the authority citation, and paragraph (d)(3) and the authority citation, to read as follows:

**§ 21.320 Awards for subsistence allowance and authorization of rehabilitation services.**

(b) \* \* \*

(3) The veteran elects payment at the educational assistance allowance rate, in which case the commencing date of payment is determined under provisions applicable to commencement of payment under Chapter 30 or Chapter 34.

(Authority: 38 U.S.C. 1508(a), 1508(f); Pub. L. 98-525)

(d) \* \* \*

(3) A veteran has elected payment at the educational assistance rate paid under Chapter 30 or Chapter 34. The ending date of the award is determined under regulations applicable to termination of training under Chapter 30 or Chapter 34.

(Authority: 38 U.S.C. 1508(a), 1508(f); Pub. L. 98-525)

12. Section 21.330 is amended by revising paragraph (a) and the authority citation, to read as follows:

**§ 21.330 Apportionment.**

(a) *General.* Where in order, the VA will apportion subsistence allowance in accordance with § 3.451 of this title, subject to the limitations of § 3.458 of

this title. If the veteran is in receipt of benefits at the Chapter 34 rate, apportionments shall be in accordance with § 21.4140 of this part. If the veteran is in receipt of benefits at the Chapter 30 rate, the VA will not apportion these benefits.

(Authority: 38 U.S.C. 3107(c); Pub. L. 98-525)

13. Section 21.334 is amended by revising the section heading, paragraph (a) and the authority citation, (b) introductory text, (b)(1), the authority citation following paragraph (b)(2), (c) introductory text, (c)(2), (c)(3), the authority citation following paragraph (c)(4), (d)(1), (d)(2) and the authority citation, and by adding paragraph (e), to read as follows:

**§ 21.334 Election of payment at the Chapter 30 or Chapter 34 rate.**

(a) *Election.* When the veteran elects payment of an allowance at the Chapter 30 or Chapter 34 rate, the effective dates for commencement, reduction, and termination of the allowance shall be in accordance with §§ 21.4130 through 21.4135 and § 21.1042(a)(2) of this part under Chapter 34, and §§ 21.7130 through 21.7135 and § 21.70509(a) of this part under Chapter 30.

(Authority: 38 U.S.C. 1508(f), 1780; Pub. L. 98-525)

(b) *Election of payment at the Chapter 30 or Chapter 34 rate subsequent to induction into a rehabilitation program.* Election of payment at the Chapter 30 or Chapter 34 rate subsequent to induction into training is permissible under provisions of § 21.264 (a) and (b). The effective date of the election is the latest of the following dates:

(1) The commencing date determined under the provisions of § 21.4131 of this part in the case of a veteran who has elected payment at the Chapter 34 rate or determined under § 21.7131 of this part in the case of a veteran who has elected payment at the Chapter 30 rate; or

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

(c) *Reelection of subsistence allowance subsequent to induction.* If a veteran reelections subsistence allowance under provisions of § 21.264(b) of this part, the effective date of change is earliest of the following:

(2) The veteran's Chapter 30 or Chapter 34 delimiting date;

(3) The day after exhaustion of Chapter 30 or Chapter 34 entitlement; or

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)



(d) \* \* \*

(1) *Payment at the Chapter 30 or Chapter 34 rate.* If an otherwise eligible veteran elects payment at the Chapter 30 or Chapter 34 rate during a period between periods of instruction, the effective date of the election shall be the first day of the next period of instruction.

(2) *Subsistence allowance.* If an otherwise eligible veteran reelects subsistence allowance during leave or between periods of instruction following election of payment at the Chapter 30 and Chapter 34 rate, the effective date of the change will be the date of the reelection or the beginning of the next period of training, whichever is to the veteran's benefit.

(Authority: 38 U.S.C. 1508(f), Pub. L. 88-525)

(e) *Effect of Chapter 34 program termination.* (1) Since Chapter 34 benefits are not payable beyond December 31, 1989, any previous election of benefits at that rate is terminated as of that date;

(2) A veteran entitled to Chapter 30 benefits based on his or her Chapter 34 eligibility as of December 31, 1989, and whose election of Chapter 34 benefits is terminated as of that date under paragraph (e)(1) of this section must, if the individual desires payment at the Chapter 30 rate, elect such payment.

(Authority: 38 U.S.C. 1411(a); Pub. L. 98-525)

14. Section 21.340 is amended by revising paragraph (c) and the authority citation, to read as follows:

#### § 21.340 Introduction.

(c) *Election of benefits at the Chapter 30 or Chapter 34 rate.* If a veteran elects to receive an allowance paid at the Chapter 30 or Chapter 34 rate, the effect of absences is determined in the same manner as provided in §§ 21.4204 and 21.4205 of this part for Chapter 34 or §§ 21.7139 and 21.7154 of this part for Chapter 30.

(Authority: 38 U.S.C. 1508(f), 1510; Pub. L. 98-525)

[FR Doc. 89-2001 Filed 1-27-89; 8:45 am]

BILLING CODE 8320-01-M

### 38 CFR Part 21

#### Veterans Education; Waiver of the 85-15 Percent Ratio Requirement

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations.

**SUMMARY:** Generally, the law and the Code of Federal Regulations prohibit the Veterans Administration (VA) from

approving new enrollments under many of the education programs which the VA administers when the VA finds that 85 percent or more of the students enrolled are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or the VA. There is provision for waiver of this requirement. However, the pertinent regulation is not clear as to who has the authority to grant this waiver. This regulation corrects this.

**EFFECTIVE DATE:** December 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** William G. Susling, Jr., Acting Assistant Director for Education Policy and Program Administration (225C), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2668.

**SUPPLEMENTARY INFORMATION:** On pages 27533 and 27534 of the *Federal Register* of July 21, 1988, there was published a proposal to amend 38 CFR Part 21 of clarify that the Director, Vocational Rehabilitation and Education Service, has the authority to waive the prohibition on approving new enrollments under many of the education programs which the VA administers when the VA finds that 85 percent or more of the students enrolled are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or the VA. Interested people were given 32 days to submit comments, objections or suggestions. The VA received no comments, objections or suggestions. Accordingly, the agency is making the amended regulation final.

The VA has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled *Federal Regulation*. The regulation will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and

final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this change simply specifies the VA official who is authorized to exercise waiver authority. It does not change that authority. Moreover, it has been the agency's administrative experience that fewer than five educational institutions apply each year to the Director, Vocational Rehabilitation and Education Service, for a waiver. Many of these are not small entities. Even though a slight increase in this number can be expected as enrollments under the Montgomery GI Bill—Active Duty increase, the VA does not think that the number of small entities affected by this proposal will be substantial. There will be no significant economic impact on a substantial number of other small entities, i.e., small businesses and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

#### List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan program—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 20, 1988.

Thomas K. Turnage,  
Administrator.

#### PART 21—[AMENDED]

30 CFR Part 21, Vocational Rehabilitation and Education, § 21.4201 is amended by revising the first two sentences of paragraph (f)(1), and paragraphs (f)(1)(ii) and (h) to read as follows:

#### § 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

(f) \* \* \*

(1) Schools must submit to the VA all calculations needed to support the exemption found in paragraph (c)(4) of this section. If the school is organized on a term, quarter, or semester basis, it shall make that submission no later than 30 days after the beginning of the first term for which the school wants the exemption to apply. \* \* \*

(ii) Until such time as the total number of veterans and eligible persons receiving assistance under chapters 30, 31, 32, 34, 35 or 36, title 38, United States Code, who are enrolled in the educational institution offering the